

Senate Bill No. 1146

Passed the Senate August 30, 2000

Secretary of the Senate

Passed the Assembly August 29, 2000

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2000, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 43104 of, and to add Sections 39027.3 and 43105.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, Burton. Motor vehicles: pollution control devices.

Existing law authorizes the State Air Resources Board to adopt and implement emissions standards for new motor vehicles to control emissions from those vehicles.

This bill would require the state board, for all 1994 and later model-year motor vehicles that are equipped with on board diagnostic systems and that are certified in accordance with specified test procedures, to adopt regulations that would require motor vehicle manufacturers to take specified actions to make available information relating to motor vehicle emissions monitoring and testing, and diagnostic systems, as prescribed. The bill would provide for the imposition of reasonable business conditions as a condition of the disclosure of information determined to be a trade secret, and would authorize a court to issue a protective order concerning that information.

The bill would require the executive officer of the state board, if he or she obtains credible evidence of a motor vehicle manufacturer's failure to comply with any of the requirements imposed by those regulations, to issue a notice to comply to the manufacturer and would require the manufacturer to submit a compliance plan, as specified. The bill would require an administrative hearing to be conducted by a hearing officer if the manufacturer contests the notice to comply or the executive officer rejects the compliance plan within a specified time period. The bill would require the motor vehicle manufacturer to correct the violation within 30 days from the date of a specified finding by the hearing



officer or be subject to a civil penalty in an amount not to exceed \$25,000 per day per violation.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) There are over 26 million registered motor vehicles in California, and those vehicles are relied upon heavily by California residents to conduct their everyday activities.

(b) The use of those motor vehicles results in hundreds of tons of pollutants being emitted into California's air every day, significantly affecting air quality and public health and safety. To prevent unnecessary pollution, it is in the best interests of this state to ensure that the ability of California motorists to obtain service, repair, or replacement of faulty emissions-related components of their motor vehicles is not limited by the arbitrary withholding of service, repair, or parts information by motor vehicle manufacturers.

(c) Recent emissions standards adopted and implemented by the State Air Resources Board for motor vehicles manufactured after 1993 have resulted in the development by vehicle manufacturers of "on board diagnostic computers," that interface with the many component parts of a vehicle's emissions control system. Essential service, repair, and parts information and tools for interfacing with a vehicle's on board diagnostic computer system may not be readily available to independent automotive repair technicians and facilities. Accordingly, consumers may be restricted to having the service and repair of faulty emissions-related components of a motor vehicle performed only by franchised dealerships, and consumers may be also forced to purchase replacement parts manufactured solely by or on behalf of the vehicle manufacturer. This restriction of consumer choice and options is contrary to the history of automotive repair, which saw the advent of independent repair technicians and facilities and independent

aftermarket parts manufacturers as healthy market competitors to vehicle manufacturers and their dealerships.

(d) The withholding of essential service, repair, and parts information and tools by vehicle manufacturers from independent automotive repair technicians and independent aftermarket parts manufacturers may result in improper and needlessly costly repairs that could also endanger the public and result in anticompetitive effects harmful to the best interests of the state.

(e) It is the intent of the Legislature in enacting this act during the 2000 portion of the 1999–2000 Regular Session to assure and stimulate competition in the service and repair of motor vehicles, including emissions systems, and in the availability of parts for those repairs. Further, it is the important policy of this state to encourage competition so that consumers have choices available to them in the service, repair, and parts used in the service or repair of motor vehicles.

SEC. 2. Section 39027.3 is added to the Health and Safety Code, to read:

39027.3. (a) “Bidirectional control” means the capability of a diagnostic tool to send messages on the data (bus) that temporarily overrides the module’s control over a sensor or actuator and gives control to the diagnostic tool operator. Bidirectional controls do not create permanent changes to engine or component calibrations.

(b) “Covered person” means any person engaged in the business of service or repair of motor vehicles who is licensed or registered with the Bureau of Automotive Repair, pursuant to Section 9884.6 of the Business and Professions Code, to conduct that business, or who is engaged in the manufacture or remanufacture of emissions-related motor vehicle parts for those motor vehicles.

(c) “Data stream information” means information that originates within the vehicle by a module or intelligent sensors including, but not limited to, a sensor that contains and is controlled by its own module and



transmitted between a network of modules and intelligent sensors connected in parallel with either one or two communication wires. The information is broadcast over communication wires for use by other modules such as chassis or transmissions to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration-related information.

(d) “Emissions-related motor vehicle information” means information regarding any of the following:

(1) Any original equipment system, component, or part that controls emissions.

(2) Any original equipment system, component, or part associated with the powertrain system including, but not limited to, the fuel system and ignition system.

(3) Any original equipment system or component that is likely to impact emissions, including, but not limited to, the transmission system.

(e) “Emissions-related motor vehicle part” means any direct replacement automotive part or any automotive part certified by executive order of the state board that may affect emissions from a motor vehicle, including replacement parts, consolidated parts, rebuilt parts, remanufactured parts, add-on parts, modified parts, and specialty parts.

(f) “Enhanced data stream information” means data stream information that is specific for an original equipment manufacturer’s brand of tools and equipment.

(g) “Enhanced diagnostic tool” means a diagnostic tool that is specific to the original equipment manufacturer’s vehicles.

SEC. 3. Section 43104 of the Health and Safety Code is amended to read:

43104. For the certification of new motor vehicles or new motor vehicle engines, the state board shall adopt, by regulation, test procedures and any other procedures necessary to determine whether the vehicles or engines are in compliance with the emissions standards established pursuant to Section 43101. The state board shall base its test procedures on federal test procedures or

on driving patterns typical in the urban areas of California.

SEC. 4. Section 43105.5 is added to the Health and Safety Code, to read:

43105.5. (a) For all 1994 and later model-year motor vehicles equipped with on board diagnostic systems (OBD's) and certified in accordance with the test procedures adopted pursuant to Section 43104, the state board, not later than January 1, 2002, shall adopt regulations that require a motor vehicle manufacturer to do all of the following to the extent not limited or prohibited by federal law (the regulations adopted by the state board pursuant to this provision may include subject matter similar to the subject matter included in regulations adopted by the United States Environmental Protection Agency):

(1) Make available, within a reasonable period of time, and by reasonable business means, including, but not limited to, use of the Internet, as determined by the state board, to all covered persons, the full contents of all manuals, technical service bulletins, and training materials regarding emissions-related motor vehicle information that is made available to their franchised dealerships.

(2) Make available for sale to all covered persons the manufacturer's emissions-related enhanced diagnostic tools, and make emissions-related enhanced data stream information and bidirectional controls related to tools available in electronic format to equipment and tool companies.

(3) If the motor vehicle manufacturer uses reprogrammable computer chips in its motor vehicles, provide equipment and tool companies with the information that is provided by the manufacturer to its dealerships to allow those companies to incorporate into aftermarket tools the same reprogramming capability.

(4) Make available to all covered persons, within a reasonable period of time, a general description of their on board diagnostic systems (OBD II) for the 1996 and subsequent model-years, which shall contain the



information described in this paragraph. For each monitoring system utilized by a manufacturer that illuminates the OBD II malfunction indicator light, the motor vehicle manufacturer shall provide all of the following:

(A) A general description of the operation of the monitor, including a description of the parameter that is being monitored.

(B) A listing of all typical OBD II diagnostic trouble codes associated with each monitor.

(C) A description of the typical enabling conditions for each monitor to execute during vehicle operation, including, but not limited to, minimum and maximum intake air and engine coolant temperature, vehicle speed range, and time after engine startup.

(D) A listing of each monitor sequence, execution frequency, and typical duration.

(E) A listing of typical malfunction thresholds for each monitor.

(F) For OBD II parameters for specific vehicles that deviate from the typical parameters, the OBD II description shall indicate the deviation and provide a separate listing of the typical value for those vehicles.

(G) The information required by this paragraph shall not include specific algorithms, specific software code, or specific calibration data beyond that required to be made available through the generic scan tool in federal and California on board diagnostic regulations.

(5) Not utilize any access or recognition code or any type of encryption for the purpose of preventing a vehicle owner from using an emissions-related motor vehicle part with the exception of the powertrain control modules, engine control modules, and transmission control modules, that has not been manufactured by that manufacturer or any of its original equipment suppliers.

(6) Provide to all covered persons information regarding initialization procedures relating to immobilizer circuits or other lockout devices to reinitialize vehicle on board computers that employ integral vehicle security systems if necessary to repair or



replace an emissions-related part, or if necessary for the proper installation of vehicle on board computers that employ integral vehicle security systems.

(7) All information required to be provided to covered persons by this section shall be provided, for fair, reasonable, and nondiscriminatory compensation, in a format that is readily accessible to all covered persons, as determined by the state board.

(b) Any information required to be disclosed pursuant to a final regulation adopted under this section that the motor vehicle manufacturer demonstrates to a court, on a case-by-case basis, to be a trade secret pursuant to the Uniform Trade Secret Act contained in Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code, shall be exempt from disclosure, unless the court, upon the request of a covered person seeking disclosure of the information, determines that the disclosure of the information is necessary to mitigate anticompetitive effects. In making this determination, the court shall consider, among other things, the practices of any motor vehicle manufacturer that results in the fullest disclosure of information listed in paragraph (4) of subdivision (a). In actions subject to this subdivision, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting a protective order in connection with discovery proceedings, holding an in-camera hearing, sealing the record of the action, or ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

(c) If information is required to be disclosed by a motor vehicle manufacturer pursuant to subdivision (b), the court shall allow for the imposition of reasonable business conditions as a condition of disclosure, and may include punitive sanctions for the improper release of information that is determined to be a trade secret to a competitor of the manufacturer. The court shall also provide for fair, reasonable, and nondiscriminatory compensation to the motor vehicle manufacturer for the disclosure of information determined by the court to be



a trade secret and required to be disclosed pursuant to subdivision (b). The court shall provide for the dissemination of trade secret information required to be disclosed pursuant to subdivision (b) through licensing agreements and the collection of reasonable licensing fees. If the court determines that disclosure of any of the information required to be disclosed under subdivision (b) constitutes a taking of personal property, a jury trial shall be held to determine the amount of compensation for that taking, unless waived by the motor vehicle manufacturer.

(d) The state board shall periodically conduct surveys to determine whether the information requirements imposed by this section are being fulfilled by actual field availability of the information.

(e) If the executive officer of the state board obtains credible evidence that a motor vehicle manufacturer has failed to comply with any of the requirements of this section or the regulations adopted by the state board, the executive officer shall issue a notice to comply to the manufacturer. Not later than 30 days after issuance of the notice to comply, the vehicle manufacturer shall submit to the executive officer a compliance plan, unless within that 30-day period the manufacturer requests an administrative hearing to contest the basis or scope of the notice to comply in accordance with subdivision (f). The executive officer shall accept the compliance plan if it provides adequate demonstration that the manufacturer will come into compliance with this section and the board's implementing regulations within 45 days following submission of the plan. However, the executive officer may extend the compliance period if the executive officer determines that the violation cannot be remedied within that period.

(f) If the motor vehicle manufacturer contests a notice to comply pursuant to subdivision (e) or the executive officer rejects the compliance plan submitted by the manufacturer, an administrative hearing shall be conducted by a hearing officer appointed by the state board, in accordance with procedures established by the



state board. The hearing procedures shall provide the manufacturer and any other interested party at least 30 days notice of the hearing. If, after the hearing, the hearing officer appointed by the state board finds that the motor vehicle manufacturer has failed to comply with any of the requirements of this section or the regulations adopted by the state board, and the manufacturer fails to correct the violation within 30 days from the date of the finding, the hearing officer may impose a civil penalty upon the manufacturer in an amount not to exceed twenty-five thousand dollars (\$25,000) per day per violation until the violation is corrected, as determined in accordance with the hearing procedures established by the state board. The hearing procedures may provide additional time for compliance prior to imposing a civil penalty. If so, the hearing officer may grant additional time for compliance if he or she determines that the violation cannot be remedied within 30 days of the finding that a violation has occurred.

(g) The state board, in consultation with the Department of Consumer Affairs, shall, through the year 2009, report annually to the Legislature on the extent to which the implementation of this act enacted during the 2000 portion of the 1999–2000 Regular Session is effective in furthering the intent and policy of this act.

(h) Nothing in this section is intended to authorize the infringement of intellectual property rights embodied in United States patents, trademarks, or copyrights, to the extent those rights may be exercised consistently with any other federal laws.



Approved _____, 2000

Governor

